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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 245

THE UNITED STATES OF AMERICA, APPELLANT

vs.

J. W. GILLILAND, RALPH GILLILAND, FRED A. WILLIAMS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS

FILED JULY 15, 1940

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1 In United States District Court for the Eastern District of Texas, Tyler Division

Cr. No. 4394

UNITED STATES OF AMERICA

vs.

J. W. GILLILAND, RALPH GILLILAND, FRED A. WILLIAMS, EUGENE P. WILLIAMS, J. H. CAMPBELL, DAVID C. MCCALEB, D. V. LOFLIN, W. H. SPARKS, H. O. RADCLIFFE, C. G. PONDER, FRANK JONES, EDDIE LAWSON, L. TOLBERT, JOE VARDEMAN, J. F. SHEPPERD, ALIAS J. F. SHEPPARD, O. L. SCARBOROUGH, A. M. PRUITT, VANCE E. POWELL, GEORGE RHODUS, EARL HENDRIX, W. C. ADAMS, FRED H. CONNALLY, HARRY L. VISER, A. H. MEADOWS, R. G. TRIPPETT, AND BELL GENERAL PIPE LINE COMPANY

Indictment

Filed Feb. 21, 1938

At a regular term of the United States District Court for the Eastern District of Texas, begun and holden, within and for the Tyler Division of said District, at Tyler, Smith County, Texas, in said division and district, on the 14th day of February A. D. 1938, the Grand Jurors of the United States of America within and for said district having been duly summoned, tried, empaneled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America committed within said District upon their oaths aforesaid in the name and by the authority of the United States of America, do present and find:

That one J. W. Gilliland, one Ralph Gilliland, one Fred A. Williams, one Eugene P. Williams, one J. H. Campbell, one David C. McCaleb, one D. V. Loflin, one W. H. Sparks, one H. O. Radcliffe, one C. G. Ponder, one Frank Jones, one Eddie Lawson, one L. Tolbert, one Joe Vardeman, one J. F. Shepperd, alias J. F. Sheppard, one O. L. Scarborough, one A. M. Pruitt, one Vance E. Powell, one George Rhodus, one Earl Hendrix, one W. C. Adams, one Fred H. Connally, one Harry L. Viser, one A. H. Meadows, one R. G. Trippett, and Bell General Pipe Line Company, a Texas corporation whose offices and principal place of business is at Dallas, Dallas County, Texas, said Bell General Pipe Line Company being the successor in name only, by charter amendment, to the Gilliland Pipe Line Com-

2 pany, and divers other persons whose names are to the Grand Jurors unknown and cannot be given, hereinafter referred to as Defendants, did heretofore, to wit, continuously form on or about March 1, 1935, up to on or about January 1,

1938, unlawfully, knowingly, fraudulently, wilfully, and feloniously agree, combine, confederate, and conspire among themselves and with each other, to commit divers and sundry offenses against the laws of the United States of America, to wit, to knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used, false affidavits relating to matters within the jurisdiction of the Department of the Interior and the Secretary of the Interior, and the Federal Tender Board No. 1, Kilgore, Texas, knowing the same to contain fraudulent and fictitious statements, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being, each of them, a Governmental Department and Agency of the United States.

The Grand Jurors further present that a more definite description of the unlawful agreement and conspiracy to commit said offenses in violation of the laws of the United States, is as follows:

That certain of the said Defendants would produce and cause to be produced oil from certain leases hereinafter described, situated in Gregg and Upshur Counties, Texas, and within jurisdiction of this Court, which oil would be produced in violation of the laws of Texas, and the rules and regulations of the Railroad Commission of Texas, and in excess of the amounts of oil permitted to be produced from the wells on said leases. Certain others of the said Defendants were to, without lawful authority and without approved tenders or permits of the Railroad Commission of Texas or the Federal Tender Board No. 1, of Kilgore, Texas, transport the said unlawfully produced oil from the said leases to the Gilliland Refining Company at Gladewater, Gregg, County, Texas, or cause the same to be done, and certain others of said Defendants were to refine the said unlawfully produced oil so transported, and manufacture it into contraband products at the said Gilliland Refinery in the City of Gladewater, Texas, or cause the same to be done. Certain others of the said Defendants were to sell, ship, and deliver into interstate commerce,
3 the said contraband products so manufactured and cause the same to be done, without lawful authority and in violation of the laws of the United States.

That said Defendants would make and cause to be made, use and cause to be used false and fraudulent affidavits in, and relating to, matters within the jurisdiction of said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, knowing that said affidavits would contain fraudulent and fictitious statements, and which false affidavits would relate to and cover reports designated as

(1) Federal Form D, Monthly Producer's Reports to be filed with said Federal Tender Board No. 1, Kilgore, Texas, and which would purport to show the amount of petroleum oil produced from the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, the Walker-Harris Lease, Martha Dillard Survey, Gregg County, Texas, and the J. H. Sheppard Lease, T. Allen Survey, Upshur County, Texas, from on or about the 1st day of March 1935, up to and including about the 30th day of June 1936; (2) Federal Form C, Monthly Pipe Line and Storage Reports to be filed with said Federal Tender Board No. 1, Kilgore, Texas, and which would purport to show the amount of petroleum oil received by the pipe lines and the amount of oil delivered by the pipe lines of the Gilliland Refining Company and the Gilliland Pipe Line Company, from on or about the 1st day of March 1935, up to and including about the 20th day of October 1936; (3) Federal Form A, Refinery and Reclamation Plant Reports to be filed with said Federal Tender Board No. 1, Kilgore, Texas, and would purport to show the amount of petroleum oil and products thereof in refinery storage at the 1st of each month, and would purport to show the amount of petroleum oil and products received each month, the amount of such materials consumed in manufacturing operations, the amount of products manufactured therefrom, and the amount of deliveries of all oil and products, said reports to be made on behalf of the Gilliland Refining Company, Gladewater, Texas, from on or about the 1st day of March 1935, up to and including about the 20th day of October 1936.

The exact place, division, and district where the said Defendants entered into said agreement, combination, confederation, and conspiracy among themselves and with each other and with divers other persons whose names are to the Grand Jurors unknown, is to the Grand Jurors unknown and cannot be given.

4 That in pursuance of the aforesaid unlawful conspiracy, confederation, and agreement between said Defendants and other persons to the Grand Jurors unknown, and to effect the object thereof the following overt acts were committed by said Defendants within the jurisdiction of this Court and within the Tyler Division thereof as follows, to wit:

1. That on or about April 20, 1935, in Gregg County, Texas, Frank Jones executed before the Defendant, E. P. Williams, Notary Public, Gregg County, Texas, an affidavit to Federal Form D, Monthly Producer's Report, of the Oil, Inc., for the month of March 1935, which report contained false statements as to the quantity of oil produced and delivered by said Oil, Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

2. That on or about May 15, 1935, Frank Jones, in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report, of the Oil, Inc., for the month of April 1935, which report contained false statements as to the quantity of oil produced and delivered by said Oil, Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

3. That on or about June 5, 1935, Frank Jones, in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report, of the Oil, Inc., for the month of May 1935, which report contained false statements as to the quantity of oil produced and delivered by said Oil, Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

4. That on or about July 3, 1935, Frank Jones in Gregg County, Texas, before Madge Lindsey, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report, of the Oil, Inc., for the month of June 1935, which report contained false statements as to the quantity of oil produced and delivered by said Oil, Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

5. That on or about August 3, 1935, Eddie Lawson in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report of the Oil, Inc., for the month of July 1935, which report contained false statements as to the quantity of oil produced and delivered by said Oil, Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

6. That on or about September 5, 1935, Eddie Lawson, in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report, of the Oil Inc., for the month of August 1935, which report contained false statements as to the quantity of oil produced and delivered by said Oil Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

7. That on or about October 3, 1935, Eddie Lawson, in Gregg County, Texas, before Bereth M. Parkins, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report, of the Oil Inc., for the month of September 1935, which report contained false statements as to the quantity of oil produced and delivered by said Oil Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

8. That on divers other dates thereafter, Eddie Lawson, in Gregg County, Texas, before Bereth M. Parkins, Notary Public, Gregg County, Texas, executed affidavits to Federal Form D, Monthly Producers' Reports, of the Oil Inc., for the months of October, November, and December, 1935, and the months of January, February, March, April, and May, 1936, which reports contained false statements as to the quantity of oil produced and delivered during each of said months by said Oil Inc., from the wells located upon the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas.

9. That on or about April 20, 1935, Joe Vardeman in Gregg County, Texas, before the Defendant Eugene P. Williams, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report of the Metairie Oil Corporation for the month of March 1935, which report contained false statements as to the quantity of oil produced and delivered by said Metairie Oil Corporation from the wells Located upon the J. H. Sheppard Lease, T. Allen Survey, Upshur County, Texas.

6 10. That on or about May 15, 1935, Frank Jones in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report, of the Metairie Oil Corporation for the month of April 1935, which report contained false statements as to the quantity of oil produced and delivered by said Metairie Oil Corporation from the wells located upon the J. H. Sheppard Lease, T. Allen Survey, Upshur County, Texas.

11. That on or about June 5, 1935, J. F. Shepperd, alias J. F. Sheppard, in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report of the Metairie Oil Corporation for the month of May 1935, which report contained false statements as to the quantity of oil produced and delivered by said Metairie Oil Corporation from the wells located upon the J. H. Sheppard Lease, T. Allen Survey, Upshur County, Texas.

12. That on or about July 3, 1935, August 3, 1935, and September 5, 1935, J. F. Shepperd, alias J. F. Sheppard, in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed affidavits to Federal Form D, Monthly Producers' Reports of the Metairie Oil Corporation, for the months of June, July, and August, 1935, respectively, which reports each contained false statements as to the quantity of oil produced and delivered by said Metairie Oil Corporation

from the wells located upon the J. H. Sheppard Lease, T. Allen Survey, Upshur County, Texas.

13. That on or about October 3, 1935, L. Tolbert in Gregg County, Texas, before Bereth M. Parkins, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form D, Monthly Producer's Report of the Metairie Oil Corporation, for the month of September 1935, which report contained false statements as to the quantity of oil produced and delivered by said Metairie Oil Corporation from the wells located upon the J. H. Sheppard Lease, T. Allen Survey, Gregg County, Texas.

14. That on various dates thereafter, L. Tolbert in Gregg County, Texas, before Bereth M. Parkins, Notary Public, Gregg County, Texas, executed affidavits to Federal Form D, Monthly Producers' Reports of the Metairie Oil Corporation, for the months of October, November, and December 1935, and the months of January, February, March, April, and May 1936, which reports each contained false statements as to the quantity of oil produced and delivered during each of said months
7 by said Metairie Oil Corporation, from the wells located upon the J. H. Sheppard Lease, T. Allen Survey, Upshur County, Texas.

15. That on or about April 6, 1935, H. O. Radcliffe, in Gregg County, Texas, before the Defendant Eugene P. Williams, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form C, Monthly Pipe Line and Storage Report of the Gilliland Refining Company, Gladewater, Texas, for the month of March, 1935, which report contained false statements as to the quantity of oil received and delivered during the month of March 1935, by said Gilliland Refining Company.

16. That on or about May 10, 1935, and on or about June 5, 1935, H. O. Radcliffe in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed affidavits to Federal Form C, Monthly Pipe Line and Storage Reports of the Gilliland Refining Company, Gladewater, Texas, for the months of April and May 1935, respectively, which reports each contained false statements as to the quantity of oil received and delivered during said months by said Gilliland Refining Company.

17. That on various dates thereafter, H. O. Radcliffe in Gregg County, Texas, before Madge Lindsey, Notary Public, Gregg County, Texas, executed affidavits to Federal Form D, Monthly Pipe Line and Storage Reports of the Gilliland Refining Company, Gladewater, Texas, for the months of June, July, August, September, October, and November 1935, which reports each contained false statements as to the quantity of oil received and delivered during each of said months by said Gilliland Refining Company.

18. That on or about January 4, 1936, H. O. Radcliffe in Gregg County, Texas, before Jeanette Wallace, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form C, Monthly Pipe Line and Storage Report, of the Gilliland Refining Company, Gladewater, Texas, which report contained false statements as to the quantity of oil received and delivered during said month by said Gilliland Refining Company.

19. That on or about March 9, 1936, and April 2, 1936, H. O. Radcliffe in Gregg County, Texas, before Madge Lindsey, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form C, Monthly Pipe Line and Storage Reports of the Gilliland Pipe Line Company, Gladewater, Texas, for the months of February and March 1936, respectively, which reports each contained false statements as to the quantity of oil received and delivered during each of said months by said Gilliland Pipe Line Company.

20. That on or about May 9, 1936, O. L. Scarborough in Gregg County, Texas, before E. R. Evans, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form C, Monthly Pipe Line and Storage Report, of the Gilliland Pipe Line Company, for the month of April 1936, which report contained false statements as to the quantity of oil received and delivered during said month by said Gilliland Pipe Line Company.

21. That on or about June 9, 1936, O. L. Scarborough in Gregg County, Texas, before E. R. Evans, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form C, Monthly Pipe Line and Storage Report of the Gilliland Pipe Line Company, Gladewater, Texas, for the month of May 1936, which report contained false statements as to the quantity of oil received and delivered during said month by said Gilliland Pipe Line Company.

22. That on or about April 6, 1935, H. O. Radcliffe in Gregg County, Texas, before F. G. Hull, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form A, Refinery and Reclamation Plant Report, of the Gilliland Refining Company, Gladewater, Texas, for the month of March 1935, which report contained false statements as to the operations of said Gilliland Refining Company during said month.

23. That on or about May 7, 1935, H. O. Radcliffe in Gregg County, Texas, before F. G. Hull, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form A, Refinery and Reclamation Plant Report of the Gilliland Refining Company, Gladewater, Texas, for the month of April 1935, which report contained false statements as to the operations of said Gilliland Refining Company during said month of April 1935.

24. That on or about June 7, 1935, H. O. Radcliffe in Gregg County, Texas, before Madge Lindsey, Notary Public, Gregg

County, Texas, executed an affidavit to Federal Form A, Refinery and Reclamation Plant Report of the Gilliland Refining
9 Company, Gladewater, Texas, for the month May 1935, which report contained false statements as to the operations of said Gilliland Refining Company during said month.

25. That on or about July 6, 1935, H. O. Radcliffe, in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form A, Refinery and Reclamation Plant Report, of the Gilliland Refining Company, Gladewater, Texas, for the month of June 1935, which report contained false statements as to the operations of said Gilliland Refining Company, during said month.

26. That on or about August 12, 1935, H. O. Radcliffe, in Gregg County, Texas, before Katherine C. Brown, Notary Public, Gregg County, Texas, executed an affidavit to Federal Form A, Refinery and Reclamation Plant Report, of the Gilliland Refining Company, Gladewater, Texas, for the month of July 1935, which report contained false statements as to the operations of said Gilliland Refining Company during said month.

27. That on various dates thereafter, H. O. Radcliffe, in Gregg County, Texas, before Madge Lindsey, Notary Public, Gregg County, Texas, executed affidavits to Federal Form A, Refinery and Reclamation Plant Reports, of the Gilliland Refining Company, for the months of August, September, October, and November 1935, which reports each contained false statements as to the operations of said Gilliland Refining Company, during each of said months.

28. That on or about March 5, 1936, and April 2, 1936, H. O. Radcliffe, in Gregg County, Texas, before Madge Lindsey, Notary Public, Gregg County, Texas, executed affidavits to Federal Form A, Refinery and Reclamation Plant Reports of the Gilliland Refining Company, Gladewater, Texas, for the months of February and March 1936, which reports each contained false statements as to the operations of said Gilliland Refining Company during each of said months.

29. That on or about July 28, 1936, Ralph Gilliland delivered to A. J. Sanders a check dated July 28, 1936, in the sum of Fifteen Hundred and Fifty Dollars ($1,550.00), payable to said A. J. Sanders, drawn on the Peoples National Bank of Tyler, Texas, and signed by Ralph Gilliland.

10 30. That some time during the months of April or May 1935, the exact date being to the Grand Jurors unknown, D. V. Loftin paid to J. H. Sheppard the sum of Two Thousand Dollars ($2,000.00) for excess oil produced from the J. H. Sheppard Lease in Upshur County, Texas.

31. That during all of the period alleged in this indictment D. V. Loflin instructed and conversed with one E. K. Bozeman as to the manner and method by which excess oil was to be produced from the A. J. Sanders Lease, Upshur County, Texas.

32. That from on or about January 1, 1936, up to and including on or about May 31, 1936, C. G. Ponder assisted E. K. Bozeman in the production of excess oil from the A. J. Sanders Lease, Upshur County, Texas.

33. That from on or about March 1, 1935, up to and including on or about December 1, 1935, C. G. Ponder instructed L. L. Lane and Archie Brannon as to the manner and method by which excess oil was to be produced from the A. J. Sanders Lease in Upshur County, Texas.

34. That on various dates during March and April of 1935, Eugene P. Williams, under instructions of Ralph Gilliland, paid various sums of money to A. J. Sanders, J. H. Sheppard, and Otto Staerker for excess oil.

35. That during all of the periods mentioned in this indictment David C. McCaleb instructed employees of the Gilliland Refining Company and the Gilliland Pipe Line Company as to the manner and method by which excess oil was to be delivered to the Gilliland Pipe Line Company and the Gilliland Refining Company.

That said unlawful combination, confederation, conspiracy, and agreement, and the acts of the Defendants in pursuance thereof, were contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

11

SECOND COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about April 30, 1935, defendants, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used a false and fraudulent affidavit, knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore,

Texas, the said Department of the Interior, and the said Secretary of the Interior, and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil, Inc., purporting to show the amount of petroleum oil produced during the month of March 1935 from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made and caused to be made, used and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg,

Before me, the undersigned authority, on this day personally appeared F. Jones, known to me to be the person whose name is subscribed to this instrument, who, after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no misstatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and
12 within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) FRANK JONES.

Sworn to and subscribed before me, this 20 day of April 1935.

[SEAL] (S) E. P. WILLIAMS,
Notary Public, Gregg County, Texas.

which affidavit and statement having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form D, Monthly Producer's Report, purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of March 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of March 1935, 9,176.4

barrels of oil, when, as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more than 15,000 barrels of oil, were produced during said month of March 1935 from said wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit, and statement was false, fraudulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of March 1935 from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about May 31, 1935, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, Davis C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, R. G. Trippett, A. H. Meadows, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior, and the said Secretary of the Interior, and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being, each of them, a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil, Inc., purporting to show the amount of petroleum oil produced during the month of April 1935 from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made and caused to be made, used and caused to be used the following affidavit and statement:

13

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared Frank Jones known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no misstatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) FRANK JONES.

Sworn to and subscribed before me, this 15th day of May 1935,
[SEAL] (S) KATHERINE C. BROWN,
Notary Public Gregg County, Texas.

14 which affidavit and statement having then and there been made and caused to be made, and executed and delivered was attached to and formed a part of said Federal Form D, Monthly Producer's Report purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of April 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of April 1935, 9,438 barrels of oil, when as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more than 15,000 barrels of oil were produced during said month of April 1935, from said wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit, and statement was false, fraudulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of April 1935, from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FOURTH COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about June 14, 1935, J. W. Gilliland,

Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Conally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil Inc., purporting to show the amount of petroleum oil produced during the month of May 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said defendants made and caused to be made, used and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared F. Jones known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no misstatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) F. JONES.

Sworn to and subscribed before me, this 5th day of June 1935.

[SEAL] (S) KATHERINE C. BROWN,
Notary Public Gregg County, Texas.

which affidavit and statement having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form D, Monthly Producer's Report purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of May 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as
16 aforesaid, the said Defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of May 1935, 9,654 barrels of oil, when as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more than 15,000 barrels of oil were produced during said month of May 1935, from said wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit, and statement was false, fraudulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of May 1935, from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FIFTH COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about July 10, 1935, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Govern-

mental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil Inc., purporting to show the amount of petroleum oil produced during the month of June 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made and caused to be made, used, and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared F. Jones known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no misstatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) F. JONES.

Sworn to and subscribed before me, this 3rd day of July, 1935.

[SEAL] (S) MADGE LINDSEY,
Notary Public Gregg County, Texas.

which affidavit and statement having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form D, Monthly Producer's Report purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of June 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of June 1935, 9,373, barrels of oil, when as a matter of fact, the true facts then and there were that a much greater quantity of

oil, to wit, more than 15,000 barrels of oil were produced during said month of June 1935, from said wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that
18 said report, affidavit, and statement was false, fra'dulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of June 1935, from said wells located as aforesaid, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

SIXTH COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about August 8, 1935, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil Inc., purporting to show the amount of petroleum oil produced during the month of July 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made
19 and caused to be made, used, and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared Eddie Lawson known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no misstatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) E. LAWSON.

Sworn to and subscribed before me, this 3rd day of July, 1935.

[SEAL] (S) KATHERINE C. BROWN,
Notary Public, Gregg County, Texas.

which said affidavit and statement having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form D, Monthly Producer's Report purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of July 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, willfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of July 1935, 9,448 barrels of oil, when as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more than 15,000 barrels of oil were produced during said month of July 1935, from said wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit and statement was false, fraudulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of July 1935, from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

20 SEVENTH COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about September 12, 1935, J. W. Gilli-

land, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use, and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to made, use, and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil, Inc., purporting to show the amount of petroleum oil produced during the month of August 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made and caused to be made, used, and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared Eddie Lawson, known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent, and that said report contains
no misstatement or inaccuracy within the knowledge of
21 affiant, and that no pertinent matter inquired about in said
report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) EDDIE LAWSON.

Sworn to and subscribed before me, this 5th day of September 1935.

[SEAL] (S) KATHERINE C. BROWN,
Notary Public, Gregg County, Texas.

which affidavit and statement having then and there been made and caused to be made, and executed, and delivered, was attached to and formed a part of said Federal Form D, Monthly Producer's Report purported to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of August 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, willfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of August 1935, 10,179 barrels of oil, when as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more than 15,000 barrels of oil were produced during said month of August 1935, from said wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit, and statement was false, fraudulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of August 1935, from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

EIGHTH COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about November 18, 1935, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George
22 Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use, and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States,

that is to say, said Defendants did then and there make and cause to be made, use, and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil, Inc., purporting to show the amount of petroleum oil produced during the month of October 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made and caused to be made, used, and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared Eddie Lawson known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no misstatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) EDDIE LAWSON.

Sworn to and subscribed before me, this 7th day of November 1935.

(S) BERETH M. PARKINS,
Notary Public Gregg County, Texas.

which affidavit and statement having then and there been made and caused to be made, and executed and delivered, was
23 attached to and formed a part of said Federal Form D, Monthly Producer's Report, purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of October 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of October 1935, 11,160 barrels of oil, when, as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more than 16,000 barrels of oil were produced during said month of October 1935, from said wells located upon said A. J.

Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit and statement was false, fraudulent, and fictitious in that they well knew that more than 16,000 barrels of oil were produced during the month of October 1935, from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

NINTH COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about December 17, 1935, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use, and cause to be used a false and fraudulent affidavit knowing the same to
24 contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use, and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil Inc., purporting to show the amount of petroleum oil produced during the month of November 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made and caused to be made, used and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared Eddie Lawson known to me to be the person whose name

is subscribed to this instrument, who after being by me duly sworn on oath the he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no misstatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) EDDIE LAWSON.

Sworn to and subscribed before me, this 10th day of December 1935.

[SEAL] (S) BERETH M. PARKINS,
Notary Public Gregg County, Texas.

which affidavit and statement having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form D, Monthly Producer's Report purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of November 1935, in which said affidavit and statement and report made and caused to
25 be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, wilfully unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of November 1935, 10,838 barrels of oil, when as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more than 15,000 barrels of oil were produced during said month of November 1935, from said wells located upon said A. J. Sanders lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit, and statement was false, fraudulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of November 1935, from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

26 TENTH COUNT

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on or about April 6, 1935, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Capbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert,

Joe Vardeman, J. F. Shepperd, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. G. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form C, Monthly Pipe Line and Storage Report, in the name of the Gilliland Refining Company, for the month of March 1935, of petroleum oil in storage and in pipe line storage, and detailed statement of East Texas crude petroleum oil receipts by runs from various leases and receipts from other gathering and purchasing companies, and attached to and forming a part of said report, the said Defendants made and caused to be made, used and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg:

Before me, the undersigned authority, on this day personally appeared H. O. Radcliffe, known to me to be the person whose name is subscribed to the above instrument, who, being by me duly sworn, on oath states that he made or caused to be made the above report including attached pages two and three, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

Subscribed and sworn to before me this 6 day of April 1935.

E. P. WILLIAMS,
Notary Public in and for Gregg County, Texas.

27 which said affidavit and statement having then and there been made and caused to be made, and used and caused to be used, and executed and delivered, was attached to and formed a part of said Federal Form C monthly Pipe Line and

Storage Report to the said Federal Tender Board No. 1, Kilgore, Texas, purporting to set out and report to said Federal Tender Board No. 1, Kilgore, Texas, the amounts of Petroleum oil in storage and in pipe line storage and detail of East Texas crude receipts by runs from various leases and receipts from other gathering or purchasing companies during the month of March 1935 by the Gilliland Refining Company, and in which affidavit and statement and report so made the said Defendants wilfully, unlawfully, and feloniously made false, fraudulent, and fictitious statements, namely, that the Gilliland Refining Company had received during the month of March 1935 from the Walker-Harris lease of the Atchafalayou Oil Corporation (sometimes designated as the Atchafalaya Oil Corporation) only 1,111.18 barrels of crude petroleum oil, when as a matter of fact and the true facts then and there being that the said Gilliland Refining Company had received larger amounts of petroleum oil during the month of March 1935 from the said Walker-Harris lease of the said Atchafalayou Oil Corporation, to wit, more than 5,000 barrels of crude petroleum oil; that the Gilliland Refining Company had received during the month of March 1935 from the J. H. Sheppard lease of the Metairie Oil Corporation, alias, Metairie Oil Company, only 489.70 barrels of crude petroleum oil, and that the Gilliland Refining Company had received during the month of March 1935 from the A. J. Sanders lease of the Oil, Inc. only 365.38 barrels of crude petroleum oil, when as a matter of fact and the true facts then and there being that the said Gilliland Refining Company had received larger amounts of crude petroleum oil during the month of March 1935 from the said J. H. Sheppard lease of the said Metairie Oil Corporation and from the said A. J. Sanders lease of the said Oil, Inc., to wit: more than 15,000 barrels of crude petroleum oil from the said J. H. Sheppard lease of the Metairie Oil Corporation and more than 15,000 barrels of crude petroleum oil from the said A. J. Sanders lease of the said Oil, Inc., and the said Defendants did then and there well know that the said report, affidavit, and statement, and the matters set forth in said report, affidavit, and statement were false, fraudulent, and fictitious, in that they well knew that the Gilliland Refining Company had received from the said
28 Walker-Harris lease of the Atchafalayou Oil Corporation and from the said J. H. Sheppard lease of the Metairie Oil Corporation and from the said A. J. Sanders lease of the Oil, Inc. during the month of March 1935 substantially larger amounts of crude petroleum oil, to wit, more than 5,000 barrels from the said Walker-Harris lease of the said Atchafalayou Oil Corporation and more than 15,000 barrels of crude petroleum oil

from the J. H. Sheppard lease of the Metairie Oil Corporation and more than 15,000 barrels of crude petroleum oil from the A. J. Sanders lease of the Oil, Inc., during the month of March 1935.

And at the time and place aforesaid of the making and using of said false, fraudulent, and fictitious affidavit and statement, the said Defendants then and there well knew the same to be false, fraudulent, and fictitious, and contrary to the Form of the Statute in such case made and provided, and against the Peace and Dignity of the United States.

ELEVENTH COUNT

And the Grand Jurors aforesaid, in their oath aforesaid, do further present that on or about May 10, 1935, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, J. H. Campbell, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Fran Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Sheppeard, alias J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H. Meadows, R. C. Trippett, and the Bell General Pipe Line Company, in Gregg County, Texas, in the Tyler Division of the Eastern District of Texas, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there make and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form C, Monthly Pipe Line and Storage Report, in the name of the Gilliland Refining Company, for the month of April 1935, of petroleum oil in storage and in pipe line storage,
29 and detailed statement of East Texas crude petroleum oil receipts by runs from various leases and receipts from other gathering and purchasing companies, and attached to and forming a part of said report, the said Defendants made and caused to be made, used, and caused to be used the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared H. O. Radcliffe, known to me to be the person whose name is subscribed to the above instrument, who, being by me duly sworn, on oath states that he made or caused to be made the above report including attached pages two and three, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

Subscribed and sworn to before me this 10 day of May 1935.

KATHERINE C. BROWN,
Notary Public in and for Gregg County, Texas.

which said affidavit and statement having then and there been made, and caused to be made, and used and caused to be used, and executed and delivered, was attached to and formed a part of said Federal Form C, Monthly Pipe Line and Storage Report, purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amounts of petroleum oil in storage and in pipe line storage and detail of East Texas crude receipts by runs from various leases and receipts from other gathering or purchasing companies during the month of April 1935, by the Gilliland Refining Company, and in which affidavit and statement and report so made the said Defendants wilfully, unlawfully, and feloniously made false, fraudulent, and fictitious statements, namely, that the Gilliland Refining Company had received during the month of April 1935 from the Walker-Harris Lease of the Atchafalayou Oil Corporation (sometimes designated as the Atchafalaya Oil Corporation) only 3,589.19 barrels of crude petroleum oil, when as a matter of fact and the true facts then and there being that the said Gilliland Refining Company had received larger amounts of petroleum oil during the month of April 1935 from the said Walker-Harris Lease of the Atchafalayou Oil Corporation, to wit: approximately 24,747 barrels of crude petroleum oil; that the Gilliland Refining Company had received during the month of April 1935 from the J. H. Sheppard lease of the Metairie Oil Corporation, alias Metairie Oil Company, no crude petroleum oil, when as a matter of fact and the true facts then and there being that the said Gilliland Refining Company had received large amounts of petroleum oil from the said J. H. Sheppard lease of the said Metairie Oil Corporation, to wit: more than 5,000 barrels; that the Gilliland Refining Company had received

during the month of April 1935 from the A. J. Sanders lease of the Oil, Inc., only 9,397.50 barrels of crude petroleum oil, when as a matter of fact and the true facts then and there being that the said Gilliland Refining Company had received larger amounts of petroleum oil from the said A. J. Sanders lease of the Oil, Inc., to wit: more than 15,000 barrels of crude petroleum oil, and the said Defendants did then and there well know that said report, affidavit, and statements, and the matters set forth in said report, affidavit, and statement were false, fraudulent, and fictitious, in that, the said Defendants well knew that the Gilliland Refining Company had received from the said Walker Harris lease of the Atchafalayou Oil Corporation during the month of April 1935 approximately 24,747 barrels of crude petroleum oil, and that the Gilliland Refining Company had received from the said J. H. Sheppard lease of the Metairie Oil Corporation more than 5,000 barrels of crude petroleum oil during the month of April 1935, and that the Gilliland Refining Company had received from the said A. J. Sanders lease of the Oil, Inc., more than 15,000 barrels of crude petroleum oil during the month of April 1935.

And at the time and place aforesaid of the making and using of said false, fraudulent, and fictitious affidavit and statement, the said Defendants then and there well knew the same to be false, fraudulent, and fictitious, and contrary to the Form of the Statute in such case made and provided, and against the Peace and Dignity of the United States.

(S.) STEVE M. KING,
United States Attorney.

(S.) H. M. BELL,
Foreman of the Grand Jury.

[File endorsement omitted.]

31 In United States District Court

[Title omitted.]

Demurrer to indictment

Filed June 6, 1939

Come now the defendants, J. W. Gilliland, Ralph Gilliland, Fred A. Williams, Eugene P. Williams, David C. McCaleb, D. V. Loflin, W. H. Sparks, H. O. Radcliffe, C. G. Ponder, Frank Jones, Eddie Lawson, L. Tolbert, Joe Vardeman, J. F. Sheppard, O. L. Scarborough, A. M. Pruitt, Vance E. Powell, George Rhodus, Earl Hendrix, W. C. Adams, Fred H. Connally, Harry L. Viser, A. H.

Meadows, R. G. Trippett, and Bell General Pipe Line Company, a corporation, and plead to the indictment herein as follows:

I

The defendants demur generally to each and all of the counts of the indictment for the reason that the facts alleged in the first count fail to show that the defendants conspired to commit any acts that are prohibited by the laws of the United States; and the facts alleged in the ten remaining counts of the indictment fail to show that the defendants committed any acts that are prohibited by the laws of the United States.

32 Wherefore, the defendants pray that the indictment, and each and all of the counts thereof, be dismissed and that they be discharged:

II

Pleading further and especially to the first count of the indictment, the defendants would show that the allegations of the charges are too general, vague, and indefinite to sufficiently charge the offense of conspiracy to commit a crime against the laws of the United States, or to apprise the defendants of the nature of the accusation against them. The charge is as follows:

That the defendants "did heretofore, to wit, continuously from on or about March 1, 1935, up to on or about January 1, 1938, unlawfully, knowingly, fraudulently, wilfully, and feloniously agree, combine, confederate, and conspire among themselves and with each other to commit divers and sundry offenses against the laws of the United States of America, to wit, to knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used, false affidavits relating to matters within the jurisdiction of the Department of the Interior, Secretary of the Interior, and the Federal Tender Board No. 1, Kilgore, Texas, knowing the same to contain fraudulent and fictitious statements, the said Department of the Interior, and the said Secretary of the Interior, and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a governmental department and agency of the United States."

The defendants challenge the sufficiency of the allegations of the charge upon the following grounds:

(1) There are innumerable subjects, or matters, within the jurisdiction of the Department of the Interior, Secretary of the Interior, and the Federal Tender Board, yet the particular subjects, or matters, which the defendants are accused of having conspired to make and use false affidavits in relation thereto are not set out or described.

33 (2) It is not alleged wherein or in what respect the affidavits were to be false; that is, what the affidavits were to contain, in relation to the subjects, or matters, within the jurisdiction of these governmental departments, that would not conform to the truth.

(3) It is not alleged how, or in what manner, the false affidavits, which the defendants are accused of having conspired to make and use, in relation to subjects or matters within the jurisdiction of these governmental departments, were to be used so that such use would be violative of the laws of the United States.

(4) The purpose and intention of the defendants in making and using the false affidavits, which they are charged with having conspired to make and use, is not averred. It is not even averred that the purpose of the defendants in making and using the false affidavits, which they are accused of having conspired to make and use, was an unlawful or prohibited purpose.

Therefore, because of the vagueness and indefiniteness of the allegations of the charge, as hereinabove pointed out, the defendants are not only ignorant of the nature of the accusation against them, and cannot properly prepare their defense, but the court cannot determine, as a matter of law, whether the evidence that may be offered under the charge will support a conviction if one should be had, because no facts are stated; furthermore, the defendants will be unable to avail themselves of their conviction or acquittal of this accusation as a bar to a subsequent prosecution for the same offense.

III

Pleading further to the first count, the court's attention is directed to a recital of facts following the charge, which purports to describe the acts which the defendants conspired to commit, which recital is denominated "a more definite de-
34 scription of the unlawful agreement and conspiracy to commit said offenses in violation of the laws of the United States." The substance, effect, and import of the facts alleged, insofar as they are relevant to the charge, is this, and nothing more than this:

(1) That the Gilliland Refining Company (who is not a defendant, nor is it charged that it or any of its officers or agents conspired or combined with the defendants in the alleged conspiracy) was to make and file with the Federal Tender Board the reports described in the recital; that Federal Form "D," Monthly Producers Report, would purport to show the production of oil from the A. J. Sanders and J. H. Shepard Leases in Upshur

County and the Walker Harris Lease in Gregg County, Texas, from March 1, 1935, to about June 30, 1936; that Federal Form "C," Monthly Pipe Line and Storage Report, would purport to show the amount of oil received by the pipe lines of the Gilliland Refining Company and Gilliland Pipe Line Company from March 1, 1935, to about October 20, 1936; that Federal Form "A," Refinery and Reclamation Plant Report, would purport to show the amount of oil and products in refinery storage at the first of each month, the amount of oil and products received each month, the amount of such materials consumed in manufacturing operations, the amount of products manufactured therefrom, and the amount of deliveries of all oil and products, from March 1, 1935, to about October 20, 1936.

(2) That the defendants conspired to make and use false affidavits which would relate to and cover these reports.

These facts do not sustain the charge or state any offense. The defendants conspired and agreed, so the facts relate, that they would make and use false affidavits that would relate to and cover the reports which the Gilliland Refining Company was to make and file with the Federal Tender Board. But it is not alleged that these reports were made and had been filed
35 with the Federal Tender Board at the time of the agreement and conspiracy; nor is it alleged that the Gilliland Refining Company ever made or filed any of these reports with the Federal Tender Board. Obviously, these reports could not become subjects of the jurisdiction of these governmental departments until they were made and filed with such departments. It, therefore, follows that the facts averred not only fail to sustain the accusation made in the charge, but wholly fail to state any offense against the United States.

IV

Pleading further to the first count, if it should be held by the court that the recital of facts following the charge is a part of the charge, and the charge, so considered, accuses the defendants of having agreed to make and use false affidavits that would relate to and cover the reports which the Gilliland Refining Company was to make and file with the Federal Tender Board, and that such an agreement is a conspiracy to violate the provisions of section 80, Title 18, U. S. C. A., nevertheless, the facts are not so definitely alleged as to advise the defendants of the charge they have to meet so as to enable them to properly prepare their defense, or so particularly as to enable them to avail themselves of their conviction or acquittal in defense of another prosecution for the same offense, or so clearly that the court may determine, as a mat-

ter of law, whether the facts stated will support a conviction. In this connection, the defendants would show the court the following:

It is alleged that the defendants unlawfully agreed and conspired to make and use false affidavits that would relate to and cover reports designated as (1) Federal Form "D," Monthly Producer's Report, which would purport to show the amount of oil produced from certain leases in Upshur and Gregg Counties, Texas, from about March 1, 1935, up to and including about the 30th day of June 1936; (2) Federal Form "C," Monthly Pipe Line and
36 Storage Report, which would purport to show the amount of oil received by the pipe lines and the amount of oil delivered by the pipe lines of the Gilliland Refining Company and Gilliland Pipe Line Company from about the 1st day of March 1935, up to and including about the 20th day of October 1936; (3) Federal Form "A," Refinery and Reclamation Plant Report, which would purport to show the amount of oil and products in refinery storage at the first of each month, the amount of oil and products received each month, the amount consumed in manufacturing operations, the amount manufactured therefrom, and the amount of the deliveries of all oil and products from about the first day of March 1935, up to and including the 20th day of October 1936; said reports to be made on behalf of the Gilliland Refining Company, Gladewater, Texas.

The defendants challenge the sufficiency of these allegations upon the following grounds:

(1) It is not alleged when the described reports were to be made by the Gilliland Refining Company, or the number of such reports, that is, whether such reports were to be made monthly, or one report upon the described forms at the end of the period stated in the allegations.

(2) It is not alleged when the Gilliland Refining Company was to make such reports and file them with the Federal Tender Board; nor is it alleged that the Gilliland Refining Company ever made any of such reports and filed them with the Federal Tender Board.

(3) It is not alleged when, where, or under what circumstances the defendants were to make such false affidavits, or what statements such affidavits were to contain with reference, or in relation, to such reports that would not conform to the truth.

(4) It is not alleged how, or in what manner, the false affidavits, which the defendants are charged with having conspired to make and use, were to be used, so that such use would constitute a violation of the law; nor is it alleged that the defendants con-
37 spired and intended to use such affidavits in violation of the law.

(5) The purpose and intention of the defendants in making and using the false affidavits, which they are charged with having conspired to make and use, is not averred. It is not even averred that the purpose of the defendants in making and using the false affidavits, which they are accused of having conspired to make and use, was an unlawful or prohibited purpose.

Wherefore, because of the insufficiency of the averments of fact, as hereinabove pointed out, the defendants are not informed of what they will be called upon to meet, and, therefore, cannot properly prepare their defense; and for these reasons the first count of the indictment should be quashed and the defendants discharged.

V

Pleading further, the defendants demur to the second count of the indictment and would show that it is averred that the defendants "did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used, a false and fraudulent affidavit, knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior, the Secretary of the Interior, and the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior, the said Secretary of the Interior, and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a governmental department and agency of the United States, that is to say, said defendants did then and there make and cause to be made, use and cause to be used, and deliver to the Federal Tender Board No. 1, Kilgore, Texas, a report in writing, designated as Federal Form 'D.' Monthly Producers Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil, Inc., purporting to show the amount of petroleum oil produced during the month of
38 March 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said defendants made and caused to be made, used and caused to be used, the following affidavit and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared F. Jones, known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn, on oath, that he is the person in charge of superintending the production from all wells on the above property and is employed in the capacity of agent, and that said report contains no misstate-

ment or inaccuracy within the knowledge of the affiant; and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report; and that said report is a correct statement of the facts therein recited.

(Signed) FRANK JONES.

Sworn to and subscribed before me this 20th day of April 1935.

(Signed) E. P. WILLIAMS,
Notary Public, Gregg County, Texas.

which affidavit and statement having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form 'D,' Monthly Producers Report, purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil produced from said wells during the month of March 1935, in which said affidavit and statement and report, made and caused to be made, and used and caused to be used, as aforesaid, the said defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of March 1935, 9,176.4 barrels of oil, when, as a matter of fact, the true facts then and there were that that a much greater quantity of oil, to wit, more than 15,000 barrels of oil were produced during said month of March 1935, from said wells located upon said A. J. Sanders Lease * * *."

39 The defendants challenge this count, because the facts averred are insufficient to constitute an offense, for the following reasons:

(1) The affidavit contains nothing on its face showing any relation to any matter or subject within the jurisdiction of the Department of the Interior, Secretary of the Interior, and Federal Tender Board; and there are no averments, other than the pleaders' conclusions, showing that the statements contained in said affidavit relate to, or the defendants intended them to relate to, any matter within the jurisdiction of said governmental departments or agencies.

(2) There are no averments showing wherein the affidavit is false. It is averred merely that the defendants made and caused to be made a report in writing to the Federal Tender Board, designated as Federal Form "D," Monthly Producers Report; that it was false because it showed a less quantity of oil as having been produced from the A. J. Sanders Lease during the month of March 1935, than was actually produced. It is then averred that the "affidavit and statement, having then and there been

made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form 'D,' Monthly Producers Report." Thus the only information the defendants can glean from the averments as to why the affidavit is false is by inference only; that is, that the affidavit is false because it was attached to a report that was false. But there is nothing in the affidavit itself, as plead, that idenfifies it as being made for the purpose of being attached to and forming a part of the report described in the averments, or as an oath as to the truthfulness of the statements contained in the report; nor is it averred that the defendants, in making and causing said affidavit to be made, intended that it should be attached to and form a part of said report, as an oath to the truthfulness of the statement contained therein. Furthermore, it is not averred who attached the affidavit to the Federal Form "D," Monthly Producers Report, and made it a part of said report.

The alleged false affidavit purports to be an affidavit as to the truthfulness of the statements contained in an instrument signed by Frank Jones; however, there are no averments showing that Frank Jones, at the behest of the defendants, signed the Federal Form "D," Monthly Producers Report, to the Federal Tender Board; nor is it averred who signed said report; neither is the date of said report shown, or any other facts identifying and connecting it with the alleged false affidavit.

Therefore, because of the insufficiency of the averments of this count, as hereinabove pointed out, no offense is stated. In any event, the averments are so general, ambiguous, and indefinite that the defendants are not advised of the nature of the accusation against them and cannot properly prepare their defense upon the issue that the affidavit, which they are charged with having made and caused to be made, contains false and fictitious statements in relation to matters within the jurisdiction of the Department of the Interior, Secretary of the Interior, and Federal Tender Board.

VI

Pleading further to the second count and demurring to the same, the court's attention is directed to the allegations wherein it is averred that in "said affidavit and statement and report, made and caused to be made, and used and caused to be used, as aforesaid, said defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of March 1935, 9,176.4 barrels of oil, when, as a matter of fact, the true facts then and there were that a much greater quantity of oil, to

wit, 15,000 barrels of oil were produced during the month of March 1935, from said wells located on the A. J. Sanders Lease."

41 This averment is wholly inconsistent with and repugnant to all the other averments of the count. The charge is that the defendants "did * * * made and cause to be made, use and cause to be used, a false and fraudulent affidavit, knowing the same to contain false and fictitious statements in relation to a matter within the jurisdiction of the Department of the Interior, Secretary of the Interior, and Federal Tender Board." The affidavit is then set out verbatim. It shows on its face to have been made by the defendant, Frank Jones, but there is nothing contained in its recitals referring to the production of oil from the A. J. Sanders Lease or any other lease.

Therefore, because of the repugnancy and conflict between the various averments of this count, no offense is stated. In any event, the averments are so conflicting, ambiguous, and indefinite that the defendants cannot ascertain therefrom the nature of the accusation against them and cannot properly prepare their defense.

VII

Pleading further to the second count, and demurring to the same, if it should be held by the court that the import and effect of the averments of the second count are to charge the defendants with having made and caused to be made a report to the Federal Tender Board, designated as Federal Form "D", Monthly Producers Report, and that the defendants knowingly and wilfully included in said report false and fictitious statements as to the production of oil from the A. J. Sanders Lease for the month of March 1935, then, in that event, the defendants would show to the court that the averments are still insufficient to state an offense, because:

(1) The report, as plead, contains nothing showing that the statements contained therein had any relation to any matter or subject within the jurisdiction of the Department of the Interior, Secretary of the Interior, or Federal Tender Board, and there are no averments, other than the pleaders' conclusion, showing

42 that the statements contained in said report relates to, or the defendants intended them to relate to, any matter within the jurisdiction of said governmental departments or agencies.

(2) It is not shown by averments that the oil, which was the subject of the report, was a subject of the jurisdiction of the Department of the Interior, Secretary of the Interior, or Federal Tender Board.

(3) It is not shown by averments that the alleged false reports was used or intended to be used by the defendants in connection with the shipment of the oil described in it in interstate commerce; neither is it alleged that the report was made and delivered to the Federal Tender Board as a basis for, or in support of, an application to said board for a certificate of clearance for the shipment of the oil described in the report in interstate commerce.

(4) It is not shown by averments what use the defendants made or intended to make of the report, neither is it averred that the defendants used or intended to use the report to accomplish an unlawful or prohibited purpose.

(5) It is averred that the report was delivered to the Federal Tender Board, but it is not averred that its delivery to said board constituted an unlawful or prohibited use of such report; nor is it disclosed how the mere delivery to the Federal Tender Board of the report constituted a prohibited use of such report.

(6) The purpose and intention of the defendants in making and causing to be made, and using and causing to be used, the alleged false report is not averred; neither is it averred that the defendants made or caused to be made, and used and caused to be used, the alleged false report for an unlawful or prohibited purpose.

VIII

Pleading further to the second count, the defendants would show to the court that there is not a single averment in the
43 entire count from which the defendants can ascertain the theory upon which the pleader bases the accusation of criminality against them, because the purpose and intention of making and causing to be made the alleged false affidavit, and delivering it to the Federal Tender Board, if it can be assumed that the pleader intended to allege that the defendants delivered it to said board, is not shown; nor is the purpose and intention of the defendants in making and causing to be made the alleged false report and delivering it to the Federal Tender Board shown. Therefore, the defendants are left in the dark and cannot prepare themselves to meet what may be shown on the trial to have been their purpose and intention in committing these acts. Will the defendants be met with proof, on the trial, that they made and caused to be made the alleged false affidavit in question relating to matters within the jurisdiction of the Department of the Interior, Secretary of the Interior, and Federal Tender Board, for the purpose of obtaining payment of a false claim against the United States, or a department or officer thereof; or will they be met with proof that they made

and caused to be made a false affidavit or report for the purpose of obtaining a loan of money upon their property from some of the Federal loan agencies, and that the false affidavit and report was made for the purpose of deceiving such agencies and defrauding the United States; or will they be met with proof at the trial that they caused the alleged false affidavit or report to be made to the Federal Tender Board for the purpose of obtaining a certificate of clearance for the transportation in interstate commerce of oil produced in excess of the law of the state? Certainly, it must be shown upon the trial that the defendants committed these acts for some unlawful or prohibited purpose; and just as certainly, the indictment must show that purpose, because the purpose and intention is an element or ingredient of the offense.

44 Therefore, for the reasons hereinabove pointed out, the averments of the second count are so indefinite, uncertain, ambiguous, and repugnant that they fail to state an offense. In any event, the defendants cannot ascertain therefrom the nature of the accusation against them, so that they can properly prepare their defense; consequently, said count should be quashed and the defendants discharged from the acousation of the same.

IX

Pleading further and demurring to the third, fourth, fifth, sixth, seventh, eighth, and ninth counts of the indictment, the defendants would show that the averments in each of said counts are identical with the averments contained in the second count, with the exception that the defendant, Eddie Lawson, signed the affidavits set out in the sixth, seventh, eighth, and ninth counts, and the further exception that each count covers a different month during the year 1935. Otherwise, as above stated, the averments of these counts are identical with the averments of the second count. Therefore, the defendants demur to and challenge the sufficiency of all of these counts upon the same grounds and objections urged against the sufficiency of the second count, to the same extent as if such objections were made separately to each count; and by reason of the insufficiency of the averments of fact in the third, fourth, fifth, sixth, seventh, eighth, and ninth counts of the indictment, no offense is stated. In any event, the averments of these counts, and each of them, are so general, indefinite, ambiguous, and repugnant that the defendants cannot ascertain therefrom the nature of the several accusations against them, and, consequently, they cannot properly prepare their defense. Therefore, each and all of said counts should be quashed and the defendants discharged.

X

Pleading further and demurring to the tenth count, the defendants would show that it is averred that they "did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used, a false and fraudulent affidavit, knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior, Secretary of the Interior, and the Federal Tender Board No. 1, Kilgore, Texas, * * * that is to say, said defendants did then and there make and cause to be made, use and cause to be used, and delivered to said Federal Tender Board No. 1, Kilgore, Texas, a report in writing, designated as Federal Form "C," Monthly Pipe Line and Storage Report, in the name of the Gilliland Refining Company, for the month of March 1935, of petroleum oil in storage and in pipe line storage, and detailed statement of East Texas crude petroleum oil receipts by runs from various leases and receipts from other gathering and purchasing companies, and, attached to and forming a part of said report, said defendants made and caused to be made, used and caused to be used, the following affidavits and statement:

STATE OF TEXAS,
County of Gregg.

Before me, the undersigned authority, on this day personally appeared H. O. Radcliffe, known to me to be the person whose name is subscribed to the above instrument, who, being by me duly sworn on oath states that he made or caused to be made the above report, including attached pages 2 and 3; that he has knowledge of all the facts therein, that said report is true and correct and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

Subscribed and sworn to before me, this 6th day of April, 1935.

(Signed) E. P. WILLIAMS,
Notary Public in and for Gregg County, Texas.

which said affidavit and statement, having then and there been made and caused to be made,[1] and used and caused to be used, *and executed and delivered,*[1] was attached to and formed a part of said Federal Form "C," Monthly Pipe Line and Storage Report to the said Federal Tender Board No. 1, Kilgore, Texas, purporting to set out and report to said Federal Tender Board No. 1, Kilgore, Texas, the amount of petroleum oil in storage and in pipe line storage, and detail of East Texas crude

[1] Italics ours

46 receipts by runs of various leases and receipts from other gathering and purchasing companies during the month of March 1935, by the Gilliland Refining Company, and in which affidavit and statement and report so made the said defendants wilfully, unlawfully, and feloniously made false, fraudulent, and fictitious statements, namely * * *." It is then averred that the report was false in that it showed less quantities of oil to have been received by the Gilliland Refining Company from certain leases in Gregg County, Texas, during the month of March 1935, than was actually received.

The defendants challenge this count because the facts averred are insufficient to constitute an offense, for the following reasons:

(1) The alleged false affidavit, as plead, does not show that it was signed or executed by any of the defendants. In fact, it does not purport to be an affidavit, but a certificate of E. P. Williams, a notary public, purporting to show that H. O. Radcliffe, known to him, had subscribed his name to an instrument, which had attached to it pages 2 and 3, and denominated by the notary as a report; but the kind and character of report, and to whom made, it not shown in the certificate. The certificate shows that Radcliffe swore that he had knowledge of all of the facts contained in the instrument and that it was true and correct, and that no pertinent matter inquired about in the report and within Radcliffe's knowledge had been omitted from the report. However, there is nothing in the certificate of the notary which identifies the oath taken by Radcliffe as being an oath as to the correctness of the Federal Form "C," Monthly Pipe Line and Storage Report to the Federal Tender Board, described in the preceding averments; nor are there any averments that Radcliffe, at the behest of the defendants, subscribed his name to the report to the Federal Tender Board and that they then caused him to appear before Williams, the notary public,

47 and make the oath as to its correctness, as shown by the certificate of Williams, so as to connect and identify the alleged false affidavit plead with the alleged report to the Federal Tender Board. On the contrary, it is averred that the defendants made and caused to be made the report to the Federal Tender Board. Therefore, the recitals of the certificate of the notary public, as plead, which is denominated by the pleader as an affidavit, are so conflicting and repugnant to the preceding averments of this count that the defendants cannot ascertain the nature of the accusation against them, and, consequently, cannot properly prepare their defense.

(2) The purported affidavit contains nothing on its face showing any relation to any matter or subject within the jurisdiction of the Department of the Interior, Secretary of the Interior, and

Federal Tender Board; and there are no averments, other than the pleader's conclusions, showing that the statements contained in said affidavit relate to, or the defendants intended them to relate to, any matter within the jurisdiction of said governmental departments or agencies.

(3) There are no averments showing wherein the purported affidavit is false. It is averred merely that the defendants made and caused to be made a report in writing to the Federal Tender Board, designated as Federal Form "C," Monthly Pipe Line and Storage Report; that it was false because it showed a less quantity of oil as having been received by the Gilliland Refining Company during the month of March 1935, than was actually received. It is then averred that the "affidavit and statement, having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form 'C,' Monthly Pipe Line and Storage Report." Thus the only information the defendants can glean from the averments as to why the purported affidavit is false, is by inference only; that is, that the purported affidavit is false because it was attached to a report that was false. But there is nothing in the purported affidavit, as plead, that identifies it as being made for the
48 purpose of being attached to and forming a part of the report described in the averments, or as an oath as to the truthfulness of the statements contained in said report; nor is it averred that the defendants, in making and causing said purported affidavit to be made, intended that it should be attached to and form a part of said report, as an oath to the truthfulness of the statements contained therein. Furthermore, it is not averred to whom the purported affidavit was delivered; nor is it averred who attached the purported affidavit to the Federal Form "C," Monthly Pipe Line and Storage Report, and made it a part of said report.

Therefore, because of the insufficiency of the averments of this count, as hereinabove pointed out, no offense is stated. In any event, the averments are so general, ambiguous, and indefinite that the defendants are not advised of the nature of the accusation against them and cannot properly prepare their defense upon the issue that the affidavit, which they are charged with having made and caused to be made, contains false and fictitious statements in relation to matters within the jurisdiction of the Department of the Interior, Secretary of the Interior, and Federal Tender Board.

XI

Pleading further to the tenth count, and demurring to the same, the court's attention is directed to the allegations wherein

it is averred: "in which affidavit and statement and report, so made, the said defendants wilfully, unlawfully, and feloniously made false, fraudulent, and fictitious statements, namely, that the Gilliland Refining Company had received, during the month of March 1935, from the Walker Harris Lease," etc. This averment is wholly inconsistent with and repugnant to all the other averments of the count. The charge is that the defendants "did * * * make and cause to be made, use, and cause to be used, a false and fraudulent affidavit knowing the same to contain false and fictitious statements in relation to a matter within the jurisdiction of the Department of the Interior, Secre-
49 tary of the Interior, and Federal Tender Board." The purported false affidavit is then set out verbatim, which, as we have seen, is nothing but a certificate of E. P. Williams, a notary public, that he had administered an oath to H. O. Radcliffe as to the execution of an instrument, and there is nothing in the recitals contained in the certificate that makes any reference to receipts of oil by the Gilliland Refining Company from the Walker Harris Lease, or any of the other leases mentioned in the averments.

Therefore, because of the repugnancy of the claims of the various averments of this count, no offense is stated. In any event, the averments are so conflicting, ambiguous, and indefinite that the defendants cannot ascertain therefrom the nature of the accusation against them and cannot properly prepare their defense.

XII

Pleading further to the tenth count, and demurring to the same, if it should be held by the court that the import and effect of the averments of the tenth count are to charge the defendants with having made and caused to be made a report to the Federal Tender Board, designated as Federal Form "C", Monthly Pipe Line and Storage Report, and that the defendants knowingly and wilfully included in said report false and fictitious statements as to the receipts of oil from the Walker Harris and other named leases for the month of March 1935 then, in that event, the defendants would show to the court that the averments are still insufficient to state an offense, because:

(1) The report, as plead, contains nothing showing that the statements contained therein had any relation to any matter or subject within the jurisdiction of the Department of the Interior, Secretary of the Interior, or Federal Tender Board, and there are no averments, other than the pleaders' conclusion, showing that the statements contained in said report relate to, or the defendants intended them to relate to, any matter within the jurisdiction of said governmental departments or agencies.

50 (2) It is not shown by averments that the oil, which was the subject of the report, was a subject of the jurisdiction of the Department of the Interior, Secretary of the Interior, or Federal Tender Board.

(3) It is not shown by averments that the alleged false report was used or intended to be used by the defendants in connection with the shipment of the oil described in it in interstate commerce; neither is it alleged that the report was made and delivered to the Federal Tender Board as a basis for, or in support of, an application to said board for a certificate of clearance for the shipment of the oil described in the report in interstate commerce.

(4) It is now shown by averments what use the defendants made or intended to make of the report, neither is it averred that the defendants used or intended to use the report to accomplish an unlawful or prohibited purpose.

(5) It is averred that the report was delivered to the Federal Tender Board, but it is not averred that its delivery to said board constituted an unlawful or prohibited use of such report; nor is it disclosed how the mere delivery to the Federal Tender Board of the report constituted a prohibited use of such report.

(6) The purpose and intention of the defendants in making and causing to be made, and using and causing to be used, the alleged false report is not averred; neither is it averred that the defendants made or caused to be made, and used and caused to be used, the alleged false report for an unlawful or prohibited purpose.

Therefore, for the reasons hereinabove pointed out, the averments of the tenth count are so indefinite, uncertain, ambiguous, and repugnant that they fail to state an offense. In any event, the defendants cannot ascertain therefrom the nature of the accusation against them, so that they can properly prepare their defense; consequently, said count should be quashed and the defendants discharged from the accusation of the same.

51 XIII

Pleading further, and demurring to the eleventh count, the defendants would show that the averments in said count are identical with the averments contained in the tenth count, with the exception that its averments cover the month of April 1935. Otherwise the averments of the tenth and eleventh counts are identical.

Therefore, the defendants demur to and challenge the sufficiency of the eleventh count upon the same grounds and objections urged against the sufficiency of the tenth count, to the same extent as if such objections were made separately to the eleventh count; and, by reason of the insufficiency of the averments of

fact in the eleventh count, no offense is stated. In any event, the averments of the eleventh count are so general, indefinite, ambiguous, and repugnant that the defendants cannot ascertain therefrom the nature of the accusation against them, and, consequently, they cannot properly prepare their defense. Therefore, the eleventh count should be quashed and the defendants discharged from the accusations of the same.

(Signed) F. W. FISCHER,
F. W. Fischer,
Tyler, Texas,
Attorney for Defendants.

[File endorsement omitted.]

52 In United States District Court for the Eastern District of Texas, Tyler Division

Criminal No. 4394

UNITED STATES OF AMERICA
vs.
J. W. GILLILAND, ET AL.

For Plaintiff: Messrs. Steve M. King, United States Attorney for the Eastern District of Texas. O. John Rogge, Assistant Attorney General, Welly K. Hopkins, Special Assistant to the Attorney General. Walter E. Gallagher, Special Assistant to the Attorney General. Ben F. Foster, Special Assistant to the Attorney General.

For Defendants: Mr. F. W. Fischer, Attorney At Law, Tyler, Texas.

Opinion

Filed Feb. 20, 1940

DAWKINS, J.: The indictment in this case consists of eleven counts. The first charges a conspiracy, as the Government contends, to violate Section 80 (a) of Tit. 18 of the U. S. Code (Section 35 of the Criminal Code), as amended by the Act of June 18, 1934, as well as the Act of February 22, 1935, known as the Connally Hot Oil Act. The remaining ten counts cover substantive offenses sought to be laid under Section 80 (a) of Tit. 18 of the Code.

Defendants have filed a lengthy demurrer, attacking the indictment on numerous grounds, which may be summarized under the following headings:

53 (1) That the facts alleged in all counts do not charge offenses against the United States;

(2) All counts are too vague and indefinite to enable defendants to plead thereto; and

(3) In any event, the facts alleged in counts two to eleven, inclusive, are insufficient to bring them within the perview of Section 80 (a) of Tit. 18, U. S. C.

Pertinent portions of the bill are quoted as follows:

"* * * Defendants, did heretofore, to-wit, continuously from on or about March 1, 1935, up to or about January 1, 1938, unlawfully, knowingly, fraudulently, wilful'y, and feloniously agree, combine, confederate, and conspire among themselves and with each other, to commit divers and sundry offenses against the laws of the United States of America, to-wit, to knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use and cause to be used, false affidavits relating to matters within the jurisdiction of the Department of the Interior and the Secretary of the Interior, and the Federal Tender Board No. 1, Kilgore, Texas, knowing the same to contain fraudulent and fictitious statements, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being, each of them, a Government Department and Agency of the United States.

"The Grand Jurors further present that a more definite description of the unlawful agreement and conspiracy to commit said offenses in violation of the laws of the United States, is as follows:

"That certain of the said Defendants would produce and cause to be produced oil from certain leases hereinafter described, situated in Gregg and Upshur Counties, Texas, and within jurisdiction of this Court, which oil would be produced in violation of the laws of Texas, and the rules and regulations of the Railroad Commission of Texas, and in excess of the amounts of oil permitted to be produced from the wells of said leases. Certain others of the said Defendants were to, without lawful authority and without approved tenders or permits of the Railroad Commission of Texas or the Federal Tender Board, No. 1, Kilgore, Texas, transport the said unlawfully produced oil from the said leases to the Gilliland Refining Company at Gladewater, Gregg County, Texas, or cause the same to be done, and certain others of said Defendants were to refine the said unlawfully produced oil so transported, and manufacture it into contraband products at the said Gilliland Refinery in the City of Gladewater, Texas, or cause the same to be done. Certain others of the said Defendants were to sell, ship, and deliver into interstate commerce, the said contraband products so manufactured and cause the same to be done, without
53 lawful authority and in violation of the laws of the United States.

"That said Defendants would make and cause to be made, use and cause to be used false and fraudulent affidavits in, and relating to, matters within the jurisdiction of said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, knowing that said affidavits would contain fraudulent and fictitious statements, and which false affidavits would relate to and cover reports designated as (1) Federal Form D, Monthly Producer's Reports to be filed with said Federal Tender Board No. 1, Kilgore, Texas, and which would purport to show the amount of petroleum oil produced from the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, the Walker-Harris Lease, Martha Dillard Survey, Gregg County, Texas, and the J. H. Sheppard Lease, T. Allen Survey, Upshur County, Texas, from on or about the 1st day of March 1935, up to and including about the 30th day of June 1936; (2) Federal Form C, Monthly Pipe Line and Storage Reports to be filed with said Federal Tender Board No. 1, Kilgore, Texas, and which would purport to show the amount of petroleum oil received by the pipe lines and the amount of oil delivered by the pipe lines of the Gilliland Refining Company and the Gilliland Pipe Line Company, from on or about the 1st day of March 1935, up to and including about the 20th day of October 1936; (3) Federal Form A, Refinery and Reclamation Plant Reports to be filed with said Federal Tender Board No. 1, Kilgore, Texas, and would purport to show the amount of petroleum oil and products thereof in refinery storage at the 1st of each month, and would purport to show the amount of petroleum oil and products received each month, the amount of such materials consumed in manufacturing operations, the amount of products manufactured therefrom, and the amount of deliveries of all oil and products, said reports to be made on behalf of the Gilliland Refining Company, Gladewater, Texas, from on or about the 1st day of March 1935, up to and including about the 20th day of October 1936."

Some thirty-five overt acts are charged, none of which need be considered at this time.

The substantive counts (two to eleven) are similar, and number two, is quoted for purposes of illustration:

"* * * on or about April 30, 1935 (Defendants)

* * * * * * * * *

did knowingly, wilfully, unlawfully, and feloniously make and cause to be made, use, and cause to be used a false and fraudulent affidavit knowing the same to contain false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and

55 the Federal Tender Board No. 1, Kilgore, Texas, the said Department of the Interior and the said Secretary of the Interior and the said Federal Tender Board No. 1, Kilgore, Texas, then and there being each of them a Governmental Department and Agency of the United States, that is to say, said Defendants did then and there made and cause to be made, use and cause to be used, and deliver to the said Federal Tender Board No. 1, Kilgore, Texas, a report in writing designated as Federal Form D, Monthly Producer's Report of the United States Department of the Interior, Petroleum Administration, in the name of Oil, Inc., purporting to show the amount of petroleum oil produced during the month of March 1935, from the oil wells located on the A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and attached to and forming a part of said report, said Defendants made and caused to be made, used and caused to be used the following affidavit and statement:

"STATE OF TEXAS,
County of Gregg.

"Before me, the undersigned authority, on this day personally appeared F. Jones, known to me to be the person whose name is subscribed to this instrument, who after being by me duly sworn on oath that he is the person in charge of superintending the production from all wells on the above property, and is employed in the capacity of Agent and that said report contains no mis'tatement or inaccuracy within the knowledge of affiant, and that no pertinent matter inquired about in said report and within the knowledge of said affiant has been omitted from said report, and that said report is a correct statement of the facts therein recited.

(S) FRANK JONES.

"Sworn to and subscribed before me, this 20 day of April 1935.

[SEAL] (S) E. P. WILLIAMS,
Notary Public, Gregg County, Texas.

"which affidavit and statement having then and there been made and caused to be made, and executed and delivered, was attached to and formed a part of said Federal Form D, Monthly Producer's Report, so purporting to set forth and report to the said Federal Tender Board No. 1, Kilgore, Texas, the amount of oil, produced from said wells during the month of March 1935, in which said affidavit and statement and report made and caused to be made, and used and caused to be used, as aforesaid, the said Defendants knowingly, wilfully, unlawfully, and feloniously made false and fraudulent statements, namely, that there were produced from the wells located upon said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, during the month of March 1935, 9,176.4

barrels of oil, when, as a matter of fact, the true facts then and there were that a much greater quantity of oil, to wit, more
56 than 15,000 barrels of oil were produced during said month of March 1935 from said wells located on said A. J. Sanders Lease, T. Allen Survey, Upshur County, Texas, and the said Defendants did then and there well know that said report, affidavit, and statement was false, fraudulent, and fictitious in that they well knew that more than 15,000 barrels of oil were produced during the month of March 1935 from said wells located as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America."

Of course, the first count is laid under Section 88, Tit. 18 of the Code (Section 37 of the Criminal Code), denouncing conspiracies. To show conspiracy, the facts charged must bring the act or acts to be committed within the provisions of some other criminal statute. The Government insists that the allegations of the present bill are encompassed by both said Section 80 (a) and the Connally Act. Section 80 (a) Tit. 18, of the U. S. Code reads:

"Whoever shall make or cause to be made or present, or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder; knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry *in any matter within the jurisdiction of any department or agency of the United States* or of any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both." [Italics by the author of the present opinion.]

Pertinent provisions of the Connally Act are as follows:

"SECTION 715b. Interstate Transportation of Contraband Oil Forbidden.

"'The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is hereby

prohibited. For the purposes of this section contraband oil shall not be deemed to have been produced in a State if none of the petroleum constituting such contraband oil, or from which it was produced or derived, was produced, transported, or
57 withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of such State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State. * * *'

"'SECTION 715d. Rules and Regulations; Certificates of Clearance; Issuance by Boards; Review of Denial of Certificate by Board. (a) The President shall prescribe such regulations as he finds necessary or appropriate for the enforcement of the provisions of this chapter, including but not limited to regulations requiring reports, maps, affidavits, and other documents relating to the production, storage, refining, processing, transporting, or handling of petroleum and petroleum products, and providing for the keeping of books and records, and for the inspection of such books and records and of properties and facilities.

"'SECTION 715e. Penalties for Violation of Chapter. Any person knowingly violating any provision of this chapter or any regulation prescribed thereunder shall upon conviction be punished by a fine of not to exceed $2,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.' * * *"

The applicable regulation under this Act provides:

"'Each producer, refiner, reclamation plant, casinghead gasoline plant, pipe line, and storer of petroleum or petroleum products in any designated area shall file with the Board for said area monthly reports on forms approved by the Secretary of the Interior. Each report on such forms shall be subscribed and sworn to by the person required to file the same, using the form of affidavit therein contained, and the person required to file the report must make therein a full, truthful, and complete disclosure of all the information required on the form and necessary to the full use thereof.'"

Reduced to simple language, the issues, as I see them, are, does Section 80 (a), Tit. 18 of the Code apply to the facts charged in this indictment; and if not, does the first count charge a conspiracy under the Connally Act?

Section 35 of the Criminal Code, of which Section 80 (a) forms a part, originated as the Act of March 2, 1863 (12 Stat. 696) and later became Section 5438 of the Revised Statutes, under the codification of December 1st, 1873, approved June 22, 1874. Up to that time it carried a single penalty as to all offenses "of not

less than one nor more than five Years" at hard labor "or" a fine of "not less than $1,000 nor more than $5,000." An
58 amendment of May 30, 1908 (35 Stat. 555), along with other minor changes, separated the offenses, and provided as to some penalties of "not more than five years" imprisonment (at hard labor), "or" a fine of "not more than $5,000" with no minimum; and as to others, evidently considered as of lesser consequence, "not more than two years" imprisonment "and" a fine "not exceeding $500." The Act of March 4, 1909 (35 Stat. 1088), entitled an "Act to Codify, Revise, and Amend the Penal Laws of the United States," declared that "they are hereby codified, revised, and amended, with title, chapters, headings, and sections, entitled and numbered and to read as follows": "Chapter Four" was headed "Offenses Against the Operations of the Government," and, beginning with Section 27 running through Section 84, the subject matter of each section was listed by a short description, and former Section 5438 of the Revised Statutes (the one involved here), received the number "35, Making or presenting false claims." The only changes made in this section were to add the words "or both" (imprisonment or fine) at the end of the first clause which provided greater penalties, the substitution of a period for the semicolon formerly used, and the transposition of the provisions for fine in each instance to precede the terms of imprisonment, but the conjunction "and" was retained between the fine and imprisonment of the lesser class of offenses.

Unsuccessful attempts having been made under Section 35 to punish persons committing frauds against some of the corporations created by Congress during the World War, in which the Government owned all or a part of the stock (Sallas v. U. S., 234 Fed. (C. C. A.) 842; U. S. vs. Bowman, 260 U. S. 92) Congress passed the amendment of October 23, 1918 (40 Stat. 1015), which made this Section applicable to "any corporation in which the United States of America is a stockholder." The Act of April 4, 1938, merely divided Section 35 into Subsections (A), (B), and (C), and separated them into paragraphs.

Up to this point, it cannot be doubted that the purpose of Section 35 of the Criminal Code was to reach "offenses against the operations of the Government," by punishing those "making or presenting false claims" against it. Therefore, this case must turn upon the effect of the amendment of June 18, 1934 (48 Stat. 996). For convenience, Subsection (a) is again quoted with the controverted clause emphasized as follows:

"SEC. 35. (a) Whoever shall make or cause to be made or pre nt or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation

in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry *in any matter within the jurisdiction of any department or agency of the United States* or of any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to such person having authority to receive the same any amount of such money or other property less than for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both." [Italics by the author of the present author of the present opinion.]

59 It is contended by the Government that this language added by the amendment of June 18, 1934, emphasized in the quotation, has broadened it to include affidavits, reports, vouchers, etc., in connection with any matter over which any Department of the Government or its agencies has jurisdiction, whether they have any relation to claims or frauds in the "operations of the Government" or not. If correct, of course, this would embrace any false affidavits or reports about oil produced in violation of

the state laws since administration of the Connally Act has been committed to the Interior Department. On the other hand, defendants insist that both the history of Section 35, as above recited, and the rules of strict construction which must be applied to criminal statutes require that the amendment of 1934 shall be confined to such acts when committed in connection with operations of the Government as such; and, further, that the Connally Act was intended to cover the entire field or subject matter of excluding hot oil from Interstate Commerce with the consequent repeal of all other provisions dealing with it. The Government points to a report of the Senate Judiciary Committee of May 28, 1934, when this amendment was being considered as supporting its contention. That report is as follows:

"The Bill amends section 35 of the Criminal Code so as to provide penalties for wilful injuries to or depredations against any property of the United States, any of its branches or departments, or any corporation in which the United States is a stockholder, and any property which is in the course of manufacture or construction for the War or Navy Departments.

"*The first two committee amendments were proposed by the Department of the Interior for the purpose of reaching a large number of cases involving the shipment of 'hot' oil, where false papers are presented in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, and false certificates are made as to the actual wages paid. The third amendment is a clarifying amendment to remove an apparent ambiguity in the House bill.*" [Italics by the author of the present opinion.]

60 Of course, where there is ambiguity or uncertainty, such reports may be resorted to in construing a statute, particularly to save it from unconstitutionality, but they cannot serve to overturn well-established principles of interpretation. Granting that the Interior Department desired and thought it could make the harsh penalties of this section of the Criminal Code applicable to its administration of the Connally Act, that purpose could not be accomplished except by the use of proper legislative methods. While it is true that everyone is presumed to know the law, still it must be in such form that a reasonable person reading it can understand what is denounced and the penalty to be expected. Can it be fairly said that anyone, examining the provisions of both the Connally Act and Section 80 (a), would understand that, in addition to the comparatively light penalties imposed by the former for its violation, if he made a false affidavit or report with respect to matters covered by its provisions, he could be imprisoned for ten years and fined $10,000; whereas, if he transported a million barrels

of hot oil in interstate commerce without making such affidavit or report, he could be imprisoned not more than six months or fined not more than $2,000? In other words, that a single step of this particular nature would subject him to punishment twenty times as great as the completed act which the law was intended to prevent? It would seem that before such an astounding conclusion is reached the purpose of Congress to make it possible should be clearly established. Under the well known doctrine of ejusdem generis, general or omnibus clauses, such as "in any matters within the jurisdiction of any department or agency," would mean matters of a similar or kindred nature to those dealt with in the explicit provisions of the law, in this instance, such as claims against, rights to, or controversies about funds or property involved in "operations of the Government." To hold with the prosecution in this case would be to say that Congress intended to create a multitude of crimes with respect to operations of the innumerable and ever
61. growing departments, bureaus, and agencies of the Government by the simple means of amending in general terms a statute which had always been understood to apply to matters in which the Government was financially interested.

In U. S. vs. Kitell, 211 U. S. 370, the Supreme Court had under consideration an indictment consisting of two counts, the first of which charged a conspiracy to illegally obtain title to coal lands belonging to the United States, in violation of Section 5440 of the Revised Statutes; and a second count charging a conspiracy to violate Section 4746 by "making and presenting and causing to be made and presented, in connection with the entries of coal land, certain false, forged, and fictitious affidavits and papers." The court called attention to the fact that the last mentioned section had been one bearing the title of "Pensions" and that the amendment of July 7, 1898, had added thereto a clause that "anyone who made or assisted in making false affidavits, etc., concerning any claim for pension * * * or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions or the Secretary of the Interior" should be punished as provided therein. As stated, the second count of the indictment was laid under this section 4746 as thus amended and charged the making of false and fictitious papers, in connection with coal lands of the Government, which were under the jurisdiction of the Secretary of the Interior. The lower court had quashed both counts of the indictment, the first of which has no bearing upon the present case, and in disposing of the appeal of the Government with respect to the second count, the court, through Justice White, later Chief Justice, at page 395, had this to say:

"It was conceded by the United States in argument, and indeed it could not have been in reason denied, that the section in question, as originally embodied under the head of pensions in the Revised Statutes, related exclusively to pension or bounty claims. No crime, therefore, could have been predicated under the original section upon the affidavits or other papers used in
62 making the coal land entries as alleged in the indictment.

The contention, therefore, as now made by the United States, to sustain the second count, rests upon the proposition that the amendment to #4746 by the act of July 7, 1898, had the effect of bringing within that section subjects to which, prior to the amendment, the section in no manner related. Turning to the text, which we have previously quoted, with the provisions incorporated by the amending a[illegible] printed therein in italics, it will be observed that every enu[illegible]on or description of new acts or papers, in addition to those [illegible]aced in the section prior to the amendment, alone concern pension or bounty land claims. The argument as to the broad scope of the statute in its present form rests therefore alone upon the proposition that because the amendatory statute in repeating the original words, viz, 'concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions,' adds to them the following, viz, 'or of the Secretary of the Interior,' therefore the statute now embraces not only acts done in connection with pension or bounty land claims but all acts of prohibited character as to any matter coming before the Secretary of the Interior, or subject to so come, entirely without reference to whether they were in pension or bounty land claims or proceedings. But to adopt this latitudinarian construction would cause the statute to create a multitude of new and substantive crimes, wholly disconnected with claims for pensions or bounty land, with which latter it was alone evidently the purpose of the original as well as the amendatory statute to deal. We think to state the proposition is in effect to answer it. When the original text and the amendments which were made are taken into view, the conclusion inevitably follows that the purpose of the amendment was but to more specifically define the pension or bounty land papers, etc., with which the statute was concerned, and to enlarge the operation of the statute in respect to such papers so as to cause it to be criminal to use the pension or bounty land papers, etc., to which the statute refers, as well before the Secretary of the Interior as before the Commissioner of Pensions. In other words, that the only purpose of the amendment was to more fully deal with the subjects with which the provision which was amended dealt,

and not by way of the amendment to legislate concerning every conceivable subject coming within the jurisdiction of the Secretary of the Interior. To otherwise hold would not only violate the most elementary rules of construction, but would require the treating as superfluous the new words of enumeration concerning pension matters which the amendatory act expressed. This follows because if the adding by way of amendment of the words

'or of the Secretary of the Interior' contemplated bringing
63 within the criminal inhibitions of the statute every act of a like nature to those forbidden done in connection with every subject within the jurisdiction of the Secretary of the Interior, then the new enumerations made in the amendment were wholly unnecessary, because without enumeration they would have been embraced in the statute as amended. Indeed, if the purpose intended to be accomplished by the amendment had been to embrace all acts of the prohibited nature as to every subject within the jurisdiction of the Secretary of the Interior, no reason can be suggested why the new legislation should have taken the form of a mere amendment to the section of the statutes which was alone concerned with pension and bounty land claims. Construing the statute as relating only to the subject of pension and bounty land claims coming within the authority of the Commissioner of Pensions of the Secretary of the Interior, it follows that a violation of its provisions could not arise from the acts charged in the indictment concerning the coal land entries." See also U. S. vs. Salen, 235 U. S. 237.

It is my belief that the principle involved in the present case is closely parallel to that applied in those just cited.

Counsel for the Government have cited a number of cases as supporting its contention that Section 80 (a) can be made to apply to the present indictment. A few of them will be analyzed to demonstrate what is believed to be the lack of application. In Mellon vs. U. S., 96 Fed. (2d) 462, the very language quoted by counsel shows that Mellon and his associates were charged with a conspiracy to commit the offense of "obtaining a modernization loan of $575" under the provisions of Tit. 1, Section 2, of the National Housing Administration Act (Tit. 12, Section 1703 U. S. C.). "which application and loan were matters within the jurisdiction of the Federal Housing Administration, an agency of the United States." Plainly, the well understood object of Section 35 of the Criminal Code to protect the Government against frauds heretofore discussed, was involved.

The case of Hammerschmidt vs. U. S., 265 U. S. 182, also cited, I think, supports the conclusion reached in the present case. Counsel quote an excerpt therefrom to the effect that "* * * it is not necessary that the Government shall be subjected to

64 Pecuniary loss * * *." This is true of any indictment for conspiracy, that is, it does not have to be charged as having succeeded, but the commission of any overt act in furtherance thereof is sufficient. Hammerschmidt was charged, with others, with conspiracy "to defraud the United States by impeding, obstructing and defeating a lawful function of its Government * * *," to wit, the execution of the Selective Service Act of May 18, 1917 (Chap. 15, 40 Stat. 76). Chief Justice Taft stated that the indictment was based upon certain language of Justice Lurton in Haas v. Henkel, 216 U. S. 462, to the effect that "if two or more persons conspire * * * to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the conspiracy, all the parties to such conspiracy shall be liable," etc. In sustaining the position of the defendants that the Selective Service Act could not properly be brought within the reach of such a charge, Justice Taft, at page 187, said:

"It is obvious that the writer of the opinion and the Court were not considering whether deceit or trickery was essential to satisfy the defrauding required under the statute. The facts in the case were such that that question was not presented. The deceit of the public, the trickery in the advance publication secured by bribery of an official, and the falsification of the report, made the fraud and deceit so clear as the gist of the offenses actually charged that their presence was not in dispute. The sole question was whether the fraud there practised must have inflicted upon the Government pecuniary loss, or whether its purpose and effect to defeat a lawful function of the Government and injure others thereby was enough. That was all that Mr. Justice Lurton's words can be construed to mean. The cases in which this case has been referred to involved unquestioned deceit or false pretense, and it was only cited in them to the point that financial loss of the Government is not necessary to violate the section. United States v. Foster, 233 U. S. 515, 526; United States v. Barnow, 239 U. S. 74, 79. See also United States v. Plyler 222, U. S. 15, in respect to #5418, Rev. Stats.

"To conspire to defraud the United States means to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft, or trickery, or at least by means that are dis-

65 honest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane or the over-reaching of those charged with carrying out the governmental intention. It is true that the works 'to defraud' as used in some statutes have been given a wide meaning, wider than their ordinary scope. They usually signify the deprivation of something of value by trick, deceit, chicane or

overreaching. They do not extend to theft by violence. They refer rather to wronging one in his property rights by dishonest methods amoung frauds. In Horman v. United States, 116 Fed. 350, #5480, Rev. Stats., as amended March 2, 1889, c. 393, 25 Stat. 873, making it a crime to devise any scheme or artifice to defraud by use of the mails and opening correspondence with any person, and to mail a letter in execution thereof, was held to be violated by the sending of a letter threatening to blacken the character of another unless that other paid the blackmailer money. It was held that the word 'scheme' in that section was of broader meaning and did not necessarily involve trickery or cunning in the scheme, if use of the mails was part of it; that intent to defraud in such a statute was satisfied by the wrongful purpose of injuring one in his property rights. The question had much consideration. The decision, however, went to the verge and should be confined to pecuniary or property injury inflicted by a scheme to use the mails for the purpose. Section 5480 has since been again amended to make its scope clearer. Its construction in the Horman Case can not be used as authority to include within the legal definition of a conspiracy to defraud the United States a mere open defiance of the governmental purpose to enforce a law by urging persons subject to it to disobey it."

I think the language thus quoted also effectively disposed of Haas v. Henkel, supra, cited by the Government in the present case.

Counsel for the Government have also cited the case of Claude E. Spivey vs. U. S., No. 9038, in which the opinion was handed down by the Court of Appeals for this Circuit on January 15, 1940. There the indictment charged offenses under Section 80 (1), 83 (2), and 338 of Tit. 18 of the U. S. C. A. It involved use of the mails to defraud, the "making of false and fictitious statements in violation of Section 80" and a "conspiracy to defraud the Government by obtaining payment or allowance of false or fraudulent claims." The facts charged were summarized by the Court as follows:

66½

"Defendants, owners of a cotton gin and warehouse, in pursuance of a scheme, by false pretenses and practices to obtain moneys from and through the Commodity Credit Corporation, in which the United States of America was a stockholder and which was an agency of the United States, would induce farmers bringing their cotton to be ginned, to sign in blank, notes and loan agreements, commonly known as Commodity Credit Corporation cotton producer's notes. The notes and agreements so signed would be padded, that is, filled out for sums in excess of the amounts actually obtained by the farmers thereon, and with bales of cotton, which the signers thereof had not raised

or claimed; in some instances the names of makers of the notes would be forged. Thereupon defendant would take the notes to divers and sundry banks and secure credit thereon, and the banks, believing the notes were genuine, would assign them to the Commodity Credit Corporation.

"The charge in the eighteen counts under Section 80, was that the notes and cotton agreements aforesaid, would be fraudulently and fictitiously prepared and altered, so as to show thereon, sums of money and bales of cotton in excess of the amounts obtained and bales owned by the purported signers of the notes. Count twenty, charged that the things done by the defendants were and amounted to, an agreement or conspiracy to defraud the Government by obtaining or aiding to obtain, the payment or allowance of false or fraudulent claims."

From the second paragraph of the quotation it can readily be seen that in so far as Section 80 of Tit. 18 of the Code was concerned, the charge covered false, forged, and fictitious papers, seeking to fraudulently obtain money from the Government. Counsel have referred to the following language as supporting their contention:

"The points made as to the convictions under Section 80 are no better taken. The language of the section is plain and completely comprehensive, and that it was intended to, and does apply to situations of the kind in question here, is equally plain. For, it stands admitted, not only that the Commodity Credit Corporation is an agency of the United States, and that the matters in question were the lending of money on
67 farmer's notes, which come within the scope of its agency, but that the United States, though the stock is nominally held by officials of the Government, is the owner and beneficial holder of all of its stock. This being so, the fact that the stock is not in the name of the United States is immaterial. *The force and effect of statutes of this kind, designed to prevent frauds upon the Government my not be frittered away by a mere literal construction.* Read as a whole, it is perfectly plain, we think, that the statute includes the Commodity Credit Corporation, a creation of the Government, which its stock by the statutes of its creation, standing in the name of officials of the United States. Equally untenable is appellee's argument that the Section must be held to be limited to claims against, and as not extending to, negotiations with, the Government. While Criminal Statutes, may not by process of construction, be extended beyond their natural and reasonable meaning, neither may they be, by the same process, deprived of their natural meaning. The statute makes it an offense to 'falsify or cover up, by any trick, scheme, or device, a material fact, or make or

cause to be made, any false or fraudulent statements * * * in any matter within the jurisdiction of any department or agency, etc.' *The facts disclosed falsification, tricks, schemes, and devices in matters within the jurisdiction of the Commodity Credit Corporation, the Corporation covered by the Act. The fact that the Act in other portions deals with claims against the Government, does not, in any manner take from its force when dealing with other matters than claims.*" [Italics supplied.]

They relied particularly upon the last two sentences just quoted. However, the decision shows plainly that it was dealing with the facts alleged as hereinabove quoted, involving a scheme to defraud the Government, and I think its import must be restricted accordingly. In any event, I do not consider the case authority for the contention of the Government in the present one.

Notwithstanding, I have concluded that Section 35 of the Criminal Code does not apply, yet I am of the opinion that the first count of the indictment sufficiently charges a conspiracy to violate the Connally Act. It can make no difference that the allegations of fact were also intended to show an unlawful undertaking to commit offenses under Section 35 of the Criminal Code. The
68 following is quoted from the indictment to demonstrate that the conspiracy was also laid under the Connally Act.

"* * * produce and cause to be produced oil from certain leases hereinafter described, situated in Gregg and Upshur Counties, Texas, and within the jurisdiction of this Court, which oil would be produced in violation of the laws of Texas, and the rules and regulations of the Railroad Commission of Texas, and in excess of the amounts of oil permitted to be produced from the wells on said leases. Certain others of the said defendants were to, without lawful authority and without approved tenders or permits of the Railroad Commission of Texas or the Federal Tender Board No. 1 of Kilgore, Texas, transport the said unlawfully produced oil from the said leases to the Gilliland Refining Company at Gladewater, Gregg County, Texas, or cause the same to be done, and certain others of said defendants were to refine the said unlawfully produced oil so transported, and manufacture it into contraband products at the said Gilliland Refinery in the City of Gladewater, Texas, or cause the same to be done. Certain others of the said defendants were to sell, ship, and deliver into interstate commerce the said contraband products so manufactured and cause the same to be done without lawful authority and in violation of the laws of the United States."

This, I believe, is sufficient. See Short vs. U. S., 91 Fed. (2d) 969; Capone vs. U. S., 51 Fed. (2d) 609.

Without finding it necessary to discuss the contentions of the defendants in regard to the insufficiency of the allegations of the

conspiracy, I think it suffices to say that all of the information needed is given to enable the defendants to plead thereto.

My conclusion is that the demurrer should therefore be overruled as to count one and sustained as to the remaining ten counts of the indictment.

Thus read, done, and signed at Chambers on this the 19th day of February 1940.

(Signed) BEN C. DAWKINS,
United States District Judge
for the Western District of Louisiana.

[File endorsement omitted.]

69 In United States District Court

[Title omitted.]

Motion for rehearing

Filed March 7, 1940

Now comes the United States of America by its attorneys and with leave of the Court first had and obtained, respectfully moves the Court:

I

That no judgment be entered on the opinion filed herein on February 20, 1940.

II

That the opinion filed herein on February 20, 1940, be withdrawn and the Government be permitted to reargue the demurrers, filed on behalf of defendants, and to present additional authorities in support of the indictment and the applicability of Section 80, Title 18, U. S. C. A., to the facts set out in said indictment.

III

That upon rehearing of argument and presentation of additional authorities in support of the indictment and the applicability of Section 80, Title 18, U. S. C. A., to the facts set out in said indictment, the Court enter an order overruling defendants' demurrers in all particulars and hold them for trial.

(Signed) BEN F. FOSTER,
(Signed) GEORGE RED,
Attorneys for United States of America,
Also Special Assistants to the Attorney General.

70 I, Ben F. Foster, Special Assistant to the Attorney General, do certify that a true and correct copy of the foregoing motion has been served upon F. W. Fischer, counsel of record for defendants in the above entitled and numbered cause, by transmitting a true and correct copy of the same to the said F. W. Fischer by means of a registered letter, properly stamped, and deposited in the United States mails, at Houston, Texas, on the 6th day of March A. D. 1940, addressed to the said F. W. Fischer at Tyler, Texas.

(Signed) BEN F. FOSTER,
Special Assistant to the Attorney General.

[File endorsement omitted.]

71 In United States District Court

[Title omitted.]

Motion for rehearing

Filed March 9, 1940

Now come the defendants named in the indictment herein, by and through their attorney, and would respectfully show to the court that they believe the court has fallen into error in the construction of a portion of the averments contained in the first count of the indictment herein, wherein the court concluded, as shown in his opinion filed herein on February 20th, 1940, that the averments of the first count are sufficient to charge the defendants with the offense of having conspired to violate sec. 715, Title 15, U. S. C. A., commonly known as the Connally Act, for the following reasons, to wit:

I

The averments of the first count fail to show a common intent and agreement by the defendants to ship or transport into interstate commerce, from the State of Texas, contraband oil, as that term is defined by said Act of Congress.

72 II

The acts, which the defendants agreed to commit, as shown by the averments of the first count, do not constitute a violation of sec. 715, Title 15, U. S. C. A., known as the Connally Act; therefore no offense is stated, as the object of the conspiracy, assuming that the averments sufficiently show a common intent and agreement to commit such acts.

Wherefore, defendants respectfully pray that upon the hearing hereof, that the court enter a decree sustaining the demurrer of the defendants to the indictment herein in its entirety.

Respectfully submitted.

F. W. FISCHER,
Tyler, Texas,
Attorney for Defendants.

[File endorsement omitted.]

73 In United States District Court for the Eastern District of Texas, Tyler Division

Criminal No. 4394

UNITED STATES OF AMERICA
vs.
J. W. GILLILAND ET AL.

Judgment sustaining demurrer

Filed May 16, 1940

For the reasons assigned in the written opinion heretofore handed down in this case, it is ordered, adjudged, and decreed that the demurrer of the defendants to Counts 2 to 11, both inclusive, be, and the same are hereby sustained and the Counts are dismissed.

To which ruling the Government excepts and a bill of exception is allowed.

Done and signed in Monroe, Louisiana, on this the 15th day of May 1940.

(Signed) BEN C. DAWKINS,
United States District Judge for the Western District of Louisiana, sitting as Judge in the Eastern District of Texas.

[File endorsement omitted.]

74 In United States District Court

[Title omitted.]

Stipulation re exceptions

Filed June 12, 1940

It is stipulated that upon the court passing upon the respective motions for rehearing of the government and the defendants both

counsel for the government and counsel for the defendants excepted to the action of the Court in overruling their respective motions, but the Court inadvertently overlooked noting the defendants' exceptions to the Court's judgment in the decree entered herein.

(S) STEVE M. KING,
United States Attorney for the Eastern District of Texas.
(S) BEN F. FOSTER,
Special Assistant to the Attorney General.
(S) F. W. FISCHER,
Attorney for the Defendants.

[File endorsement omitted.]

75 In United States District Court

[Title omitted.]

Petition for appeal

Filed June 11, 1940

Comes now the United States of America, plaintiff herein, and states that on the 15th day of May 1940 the District Court of the United States for the Eastern District of Texas sustained a demurrer to counts two to eleven, both inclusive, of the indictment herein, and the United States of America, feeling aggrieved at the ruling of said District Court in sustaining said demurrer, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
STEVE M. KING,
United States Attorney for the Eastern District of Texas.
BEN F. FOSTER,
Special Assistant to the Attorney General.

[File endorsement omitted.]

107 In United States District Court

[Title omitted.]

Assignments of error

Filed June 11, 1940

Comes now the United States of America by Steve M. King, United States Attorney for the Eastern District of Texas, and by Ben F. Foster, Special Assistant to the Attorney General, and avers that in the record proceedings and judgment herein there is manifest error and against the just rights of the said plaintiff in this, to wit:

1. That the court erred in sustaining as to counts two to eleven, inclusive, the demurrer to the indictment.

2. That the court erred in holding that the portion of Section 35 of the Criminal Code, as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996 (U. S. C., Title 18, Sec. 80), upon which counts two to eleven of the indictment were predicated, applies only to matters in which the Government is financially interested.

3. That the court erred in holding that under the doctrine of ejusdem generis the words "in any matter within the jurisdiction of any department or agency of the United States," as contained in Section 35 of the Criminal Code as amended, are confined to such matters as claims against, rights to, or controversies
108 about funds or property involved in "operations of the Government."

4. That the court erred in holding that the addition of the words "in any matter within the jurisdiction of any department or agency of the Un ited States" to the pertinent portion of Section 35 of the Criminal Code by the 1934 amendment did not broaden the scope and application thereof.

5. That the court erred in disregarding the deletion from the applicable portion of Section 35 of the Criminal Code by the 1934 amendment of restrictive language which had limited its application to false statements, affidavits, etc., in connection with matters involving money or property of the Government.

6. That the court erred in disregarding the Report of the Senate Judiciary Committee to the effect that a purpose of the amendments to the pertinent portion of Section 35 of the Criminal Code,

which were subsequently incorporated by the 1934 Act, was to reach a large number of cases involving the shipment of "hot" oil, where false papers are presented in connection therewith.

STEVE M. KING,
United States Attorney for the Eastern District of Texas.
BEN F. FOSTER,
Special Assistant to the Attorney General.

[File endorsement omitted.]

109 In United States District Court

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States

Filed June 12, 1940

This cause having come on this day before the Court on petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for reversal of the judgment in this cause sustaining a demurrer by the defendants to counts two to eleven, inclusive, of the indictment in said cause, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered such petition, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court, Ordered and Adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court in sustaining the demurrer of the defendants to the indictment, to the Supreme Court of the United States and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

110 It is further Ordered that the United States of America be, and it is hereby, permitted a period of forty days in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Lake Charles, La., this 12th day of June 1940.

By the Court:

(S) BEN C. DAWKINS,
United States District Judge.

[File endorsement omitted.]

112 [Citation in usual form showing service on F. W. Fischer, filed June 12, 1940, omitted in printing.]

114 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed June 12, 1940

To the Clerk, United States District Court for the Eastern District of Texas:

The appellant hereby directs that in preparing the transcript of the record in this cause in the United States District Court for the Eastern District of Texas, in connection with its appeal to the Supreme Court of the United States, you include the following:

1. Indictment.
2. Demurrer.
3. Opinion.
4. Government's motion for rehearing.
4a. Defendants' motion for rehearing.
5. Order upon rehearing.
6. Judgment sustaining demurrer.
6a. Stipulation.
7. Petition for appeal to the Supreme Court.
8. Statement of jurisdiction of Supreme Court.
9. Assignments of error.
10. Order allowing appeal.
11. Notice of service on appellees of petition for appeal, order allowing appeal, assignments of error, and statement as to jurisdiction.

115 12. Citation.
13. Praecipe.

STEVE M. KING,
United States Attorney for the Eastern District of Texas.

BEN F. FOSTER,
Special Assistant to the Attorney General.

Service of the foregoing Praecipe for Transcript of Record is acknowledged this 12th day of June 1940.

(Sd.) F. W. FISCHER,
Counsel for Appellees.

[File endorsement omitted.]

116 [Clerk's certificate to foregoing transcript omitted in printing.]

117 In Supreme Court of the United States

Statement of points to be relied upon and designation of record

Filed July 23, 1940

Pursuant to Rule XIII, paragraph 9 of this Court, appellant states that it intends to rely upon all of the points in its assignments of error.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

FRANCIS BIDDLE,
Solicitor General.

1940.

Service of the above Statement of Points and Designation of Record acknowledged this 18 day of July 1940.

F. W. FISCHER,
Counsel for Appellees.

[File endorsement omitted.]

[Endorsement on cover:] File No. 44594. E. Texas, D. C. U. S. Term No. 245. The United States of America, Appellant, vs. J. W. Gilliland, Ralph Gilliland, Fred A. Williams, et al. Filed July 15, 1940. Term No. 245 O. t. 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940

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